

## **REMARKS**

### **I. Introduction**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-38 are requested to be cancelled. The cancellation of claims does not constitute acquiescence in the propriety of any rejection set forth by the Examiner. Applicant reserves the right to pursue the subject matter of the canceled claims in subsequent divisional applications.

Claims 39, 41, 52, 54, 61 66, 75 and 77 are currently amended.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Upon entry of this Amendment, claims 39-81 will remain pending in the application.

Because the foregoing amendments do not introduce new matter, entry thereof by the Examiner is respectfully requested.

### **II. Response to Issues Raised by Examiner in Outstanding Office Action**

#### **a. Claim Objections**

The Office objects to claim 41 because claim 41 has the open term “comprises,” but its parent claim, claim 39, contains the more limited term “consisting essentially of.” Office Action, p. 5. Applicant notes that claim 39 also contains the term “comprising” in providing that the food must contain a glucosinolate or an isothiocyanate. Similarly, claim 41 provides that the plant (the “food” from claim 39) comprises a glucosinolate. The use of the term comprises in claim 41, does not broaden the reading of claim 39. Applicant respectfully requests reconsideration and withdrawal of the rejection.

#### **b. Claim Rejections - 35 U.S.C. § 112, Second Paragraph**

Claims 39-40, 42-43, 48-53, 55-56, 61-65 and 71-76 are rejected by the Examiner under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office asserts that the preamble does not sufficiently explain the nature of the term “an effective amount.” Office Action, p. 5. Applicant has amended claims 39, 52, 61, and 75 to specify that the effective amount relates to the treatment or inhibition provided in the preamble and believes that these amendments address the Office’s concerns. Applicant respectfully requests reconsideration and withdrawal of the rejection.

**c. Claim Rejections - 35 U.S.C. § 112, First Paragraph**

Claims 39-40, 42-43, 48-53, 55-56, 61-65 and 71-76 are rejected by the Examiner under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The Office concedes, “The specification discloses glucosinolate and isothiocyanate, which meet the written description and enablement provisions of 35 U.S.C. 112, first paragraph.” Office Action, p. 3. However, the Office questions whether the specification provides descriptive support for “derivatives.” In order to expedite prosecution and not in acquiescence to the Office’s rejection, Applicant has amended independent claims 39, 52, 61, and 72 to recite methods of administering glucosinolates or isothiocyanates and removed reference to derivatives. As the Office has conceded that the current claims meet the written description standard, the rejection is moot. Applicant respectfully requests reconsideration and withdrawal of the rejection.

**d. Issues Under Double Patenting**

Claims 39-40, 42-43, 48-53, 55-56, 64-65 and 71-76 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-51 of U.S. Patent No. 6,737,441 (“the ‘441 patent”).

Attached herewith is a terminal disclaimer which disclaims the terminal part of the term of any patent granted on the captioned patent application which would extend beyond

the full statutory term, as shortened by any terminal disclaimer, of the '441 patent. Therefore, the rejection is moot.

**e. Claim Rejections - 35 U.S.C. § 102**

Claims 52-53 and 75-76 are rejected under 35 U.S.C. § 102 as anticipated by Dannenberg (US 5,589,504). In addition, claims 52-53, 55-56 and 75-76 are rejected as anticipated by Fahey (US 5,725,895).

The basis for these rejections is a reading of the claims which does not require the presence of *Heliobacter*. Rather, the Office utilizes the term “inhibit” to mean that the method somehow prevents the presence of *Heliobacter* but never requires the presence of *Heliobacter*. Office Action, p. 6. Applicants note that specification explains what the term inhibition of growth means in the context of this application. In this application, as explained on page 18, lines 19-21, of the Specification, “...inhibition of growth is used to mean the process where the bacterial cells stop or slow their rate of mitosis or normal metabolic processes.” Applicants are entitled to be their own lexicographers. See MPEP § 2111.01. This understanding of the term “inhibiting the growth of *Heliobacter*” requires the presence of the bacteria and for the bacteria to stop growing or slow down their growth. The correct reading of the claims is not consistent with the Office’s interpretation. Consequently, the claims should not be understood to read on the prior art provided.

In addition, Applicant notes the prior art does not show any reference to the use of sulforaphane to treat *Heliobacter* or that any of the patients studied in fact had *Heliobacter* in their system. Neither omeprazol, H2 or proton pump inhibitors are mentioned in the prior art. Consequently, the prior art disclosures do not contain each and every element of the current claims and cannot serve as anticipatory references.

Applicant respectfully requests reconsideration and withdrawal of the rejection.

**CONCLUSION**

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant(s) hereby petition(s) for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date

January 18, 2008

FOLEY & LARDNER LLP

Customer Number:

**22428**

PATENT TRADEMARK OFFICE

Telephone: (202) 672-5483

Facsimile: (202) 672-5399

By

Richard C. Peet

Richard C. Peet

Attorney for Applicant

Registration No.: 35,792